GOVERNMENT OF INDIA
LAW AND JUSTICE
LOK SABHA

UNSTARRED QUESTION NO:1190
ANSWERED ON:23.11.2016
Appointment/Vacancies of Judges
Banerjee Shri Kalyan;Suresh Shri Doddaalahalli Kempegowda;Udasi Shri Shivkumar Chanabasappa

Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether the apex court struck down the National Judicial Appointments Commission and upheld the exclusive authority of the collegium system to select higher judiciary candidates;
(b) if so, the detail thereof;
(c) whether all five ruling judges found faults with the said collegium system and if so, the details thereof;
(d) whether the Government is taking any measures to put a better mechanism in place including initiatives to ensure merit and transparency for such selection of judges and if so, the details in this regard; and
(e) whether recommendation for appointment of judges is pending before the Government and if so, the details and the response of the Government thereto?

Answer

ANSWER
MINISTER OF LAW AND JUSTICE AND ELECTRONICS AND INFORMATION TECHNOLOGY
(SHRI P.P. CHAUDHARY)
(a) : Yes, Madam.

(b) : The Collegium system of appointment of Judges of the Supreme Court and High Courts ceased to exist consequent upon the coming into force of the Constitution(Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 w.e.f 13.04.2015. The Supreme Court pronounced its judgement on 16.10.2015 and declared both the Acts as unconstitutional and void. The Collegium system as existing prior to the enforcement of the Constitution (Ninety-Ninth Amendment) Act, 2014 was declared to be operative.

(c) to (e): The Judgement was pronounced by a 5-Judge Bench having a majority of 4-1. While pronouncing the majority view, certain judges among them have expressed reservations on functioning of "Collegium System" for appointment of Judges to High Courts and Supreme court.The Supreme Court pronounced its Order on improvement in the "Collegium System" on 16.12.2015. Vide this order they have decided that the Government of India may finalize the existing Memorandum of Procedure(MoP) by supplementing it in consultation with the Supreme Court Collegium. The Supreme Court has indicated broad categories under which existing MoP can be supplemented such as eligibility criteria, transparency in the appointment process, Secretariat and complaints etc. The Government of India after due deliberations, proposed changes in the draft MoP's which were sent to the Hon'ble Chief Justice of India vide letter dated 22.3.2016.

The response of the Chief Justice of India was received on 25.5.2016 and 01.07.2016. The Supreme Court Collegium has agreed with some of the suggestions made in the revised MoP while it has not accepted some other provisions. The views of Government were conveyed to the Chief Justice of India on 3.8.2016.

Filling of vacancies of Judges in the Supreme Court and High Courts is a continuous and collaborative process of the Judiciary and Executive. As the process of finalization of the revised MoP was likely to take some time, on the initiative of the Government of India the matter was taken up with the Supreme Court and the process of appointment of Judges has been resumed, pending finalization of the revised MoP. During the current year, as on 21.11.2016, 124 Additional Judges have been made permanent and 120 fresh appointments of Judges have been made in the High Courts.

Out of 77 proposals submitted by Supreme Court Collegium(SCC), the Government has appointed 34 Judges in various High Courts and sent the names of 43 recommendees to the SCC for reconsideration. SCC reiterated the names of 37 recommendees; the proposal of 3 recommendees has been deferred and the proposal of 3 recommendees are with SCC.

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